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KAZAKHSTAN – ANTI-DUMPING MEASURES ON STEEL PIPES

REQUEST FOR CONSULTATIONS BY UKRAINE

Addendum

The following communication, dated 7 September 2018, from the delegation of Ukraine to the delegation of Kazakhstan and to the Chairperson of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

With reference to the document WT/DS530/1, G/L/1185, G/ADP/D119/1 issued on 19 September 2017, my authorities have instructed me to request further consultations with the Government of Kazakhstan pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXIII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") and Articles 17.2 and 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("Anti-Dumping Agreement").

On 30 October 2017 Ukraine and Kazakhstan held an initial round of consultations on this matter with a view to reaching a mutually satisfactory solution. While the consultations assisted in clarifying some aspects of the issues before the parties, they failed to resolve the dispute. Subsequent to the results of the first round of consultations held with Kazakhstan on 30 October 2017 Ukraine has identified additional aspects with respect to the measures at issue. Therefore, Ukraine respectfully requests further consultations with Kazakhstan with a view to reaching a mutually satisfactory solution.

This request supplements and does not replace Ukraine's request for consultations with Kazakhstan dated 19 September 2017 and circulated as document WT/DS530/1, G/L/1185, G/ADP/D119/1.¹

I. Background

This request is with respect to anti-dumping measures applied to certain types of steel pipes on the customs territory of Kazakhstan. The measures are applied pursuant to the Decision of the Collegium of the Eurasian Economic Commission ("EEC") No. 48 of 2 June 2016 on imports of certain types of steel pipes originating in Ukraine as a result of the sunset review of the anti-dumping measures on imports of certain types of steel pipes originating in Ukraine and imported on the customs territory of the Eurasian Economic Union.

Further, on 17 October 2016 an interim review was initiated² with a view to revise level of individual anti-dumping duties in light of changed circumstances. As a result of the review,

¹ https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=239627,239537,239315,238874&CurrentCatalogueIdIndex=3&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

² Notice of initiation of the interim review dated 17 October 2016 is available at http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R3_notice_initiation.pdf

investigating authority issued a Report concluding that anti-dumping duties should be decreased. However, the EEC has failed to adopt to date a decision to implement findings of the investigating authority, contained in its Report, within an established time frame for interim reviews.

II. *Measures at issue*

The measures at issue are the following:

- the Decision of the Collegium of the EEC No. 48 of 2 June 2016 "On prolongation of anti-dumping measures on certain types of steel pipes originating in Ukraine and imported into the customs territory of the Eurasian Economic Union";³
- the findings of the EEC in the Report (Notice No. 2016/55/AD1R2 of 3 June 2016) "On the results of the sunset review of anti-dumping duties on certain types of steel pipes originating in Ukraine";⁴
- the findings of the EEC Department for Internal Market Defence in the Report (Notice No. 2017/89/AD1R3 of 4 October 2017) "On the results of the interim review of anti-dumping duties on certain types of steel pipes originating in Ukraine with a view to review level of individual anti-dumping duties in light of changed circumstances".⁵

Ukraine considers that the current anti-dumping measures on certain types of steel pipes originating in Ukraine together with the EEC's failure to comply with procedural requirements are inconsistent with Article VI of the GATT 1994 and the Anti-Dumping Agreement.

In addition, this Request for Consultations also covers in whatever form: any amendments, supplements, or extensions to or of the measures referred to in this Section; any measures replacing, renewing or implementing the measures referred to in this Section; and, any measures related to the measures referred to in this Section.

III. *Legal basis for the complaint*

Ukraine considers that the measures referred to in Section II above are inconsistent with several of Kazakhstan's WTO obligations, including, but not limited to:

1. Article 9.1 of the Anti-Dumping Agreement because the anti-dumping duties, which are currently in place, exceed the adequate level that could remove injury to the domestic industry;
2. Article 9.3 of the Anti-Dumping Agreement and paragraph 2 of Article VI of the GATT 1994, because the anti-dumping duties, which are currently in place, exceed the margin of dumping determined by the EEC Department for Internal Market Defence within the interim review;
3. Article 11.1 of the Anti-Dumping Agreement because findings of the EEC Department for Internal Market Defence under the interim review, contained in its Report dated 4 October 2017, proved that the anti-dumping duties should be decreased, but the anti-dumping duties are still in force in the amount that exceeds the level of duty necessary to counteract dumping that is causing injury;
4. Article 11.2 of the Anti-Dumping Agreement because the measure that is no longer warranted is still in force despite of the findings of the EEC Department for Internal Market Defence within the interim review that the anti-dumping duties should be decreased;

³ https://docs.eaeunion.org/docs/ru-ru/01410363/clcd_03062016_48

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http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R2_report_final.pdf

⁵

http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD1R3_report.pdf

5. Article 11.4 of the Anti-Dumping Agreement because the EEC failed to conclude the interim review expeditiously and has been carrying out such review for more than 20 months;
6. Article 12.2.2 of the Anti-Dumping Agreement because the EEC failed to give a public notice of conclusion or suspension of the interim review as the decision has not been adopted yet.

These violations appear to nullify or impair benefits accruing to Ukraine directly or indirectly under the cited agreements.

Ukraine reserves the right to raise additional claims and legal matters during the course of the consultations and in any future request for panel proceedings.

Ukraine looks forward to receiving Kazakhstan's reply to this request and to fixing a mutually convenient date for consultations.
